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In the Supreme Court of the United States

OCTOBER TERM, 1961

No. 565

ARIS GLOVES, INC., PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF CUSTOMS AND PATENT APPEALS

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINIONS BELOW

The opinion of the Customs Court (R. 16–38) [1] is reported at 188 F. Supp. 50. The opinion of the Court of Customs and Patent Appeals (Pet. App. 1–5) is reported at 96 Treasury Decisions No. 33, p. 22 (August 17, 1961).

JURISDICTION

The judgment of the Court of Customs and Patent Appeals was entered on July 7, 1961. On October 5, 1961, the Chief Justice extended the time for the filing of a petition for a writ of certiorari to and including

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[1] "R." refers to the printed record filed in the Court of Customs and Patent Appeals, which is on file in this Court.

December 4, 1961. The petition was filed on November 21, 1961. The jurisdiction of this Court is invoked under 28 U.S.C. 1256.

QUESTION PRESENTED

Whether the notice published by the Interdepartmental Committee on Trade Agreements in the Federal Register constituted, under Section 4 of the Trade Agreements Act of 1934, "reasonable public notice of the intention to negotiate an agreement * * *" involving a duty increase on gloves "in order that any interested person may have an opportunity to present his views to the President * * *."

STATUTE AND EXECUTIVE ORDER INVOLVED

The relevant portions of Section 4 of the Trade Agreements Act of 1934 (19 U.S.C. 1354), Executive Order No. 10082 (14 F.R. 6105), and the Notice of the Interdepartmental Committee on Trade Agreements are set forth in the Appendix, *infra*, pp. 11–14.

STATEMENT

Upon entry at the Port of New York on July 12, 1951, merchandise imported by petitioner was classified by the Collector of Customs as leather gloves under paragraph 1532(a) of the Tariff Act of 1930, 46 Stat. 667, as amended, 19 U.S.C. 1001. Customs duties were assessed against it at the rate of 35 per cent ad valorem under the paragraph. Thereafter petitioner filed this protest in the Customs Court based upon the asserted invalidity of the increase in duty from 25 per cent to 35 per cent ad valorem provided by Presidential Proclamation No. 2929, June 2, 1951, T.D. 52739, pursuant to the agreement reached

in the Torquay Protocol of 1951 (R. 7) to the General Agreement on Tariffs and Trade (GATT).[2] Petitioner's contention was that the notice of intention published on April 11, 1950, by the Interdepartmental Committee on Trade Agreements in the Federal Register (15 F.R. 2114) "to enter into negotiations [at Torquay] * * * for the purpose of negotiating mutually advantageous tariff concessions" (see *infra*, p. 12) must be interpreted to have given notice with respect to reductions, but not with respect to duty increases. Therefore, petitioner claimed, the notice was inadequate under Section 4 of the Trade Agreements Act of 1934, 48 Stat. 943, as amended, 19 U.S.C. 1354—which requires "reasonable public notice of the intention to negotiate an agreement"—to support the increase in duty on gloves which was negotiated at Torquay. The Customs Court, one judge dissenting, agreed with petitioner and held that the proper rate of duty was 25 per cent ad valorem (R. 30, 39).

The Court of Customs and Patent Appeals unanimously reversed. It held that the provision in the notice of intention relied upon by petitioner must be read in conjunction with the next paragraph of the notice:

> There is annexed hereto a list of articles imported into the United States to be considered for possible modification of duties and other

[2] The rate of duty on leather gloves prescribed by paragraph 1532 of the Tariff Act of 1930 was 50 per cent. The rate was decreased to 25 per cent by a provision in the General Agreement on Tariffs and Trade (T.D. 51802). In the Torquay Protocol, this provision was withdrawn and, in its place, a provision for a 35 per cent ad valorem rate was substituted.

> import restrictions, imposition of additional import restrictions, or specific continuance of existing customs or excise treatment in proposed trade agreement negotiation with the above countries.

Taken together, the court concluded, the two provisions constituted the reasonable public notice to interested parties of a possible increase in duties required by Section 4 of the Trade Agreements Act of 1934.

ARGUMENT

In this action, petitioner endeavors to invalidate a provision of the Torquay Protocol increasing the duty on leather gloves from 25 per cent ad valorem to 35 per cent ad valorem on the sole ground that the wording of the notice of intention to negotiate the Protocol did not give reasonable notice that the rate of duty on such merchandise might be increased. The Court of Customs and Patent Appeals held that the notice, when read as a whole, was sufficient to constitute reasonable public notice to interested persons of such a possible increase, as required by the Trade Agreements Act. We submit that that decision is clearly correct and does not conflict with the decisions of this Court or any other court. Accordingly, further review by this Court is not warranted.

1. Petitioner contends that the term "concessions" has the fixed and definite meaning of reductions in duty or "bindings" of present duty. Therefore, it claims, the use of that term in the notice did not apprise interested parties that an increase in duty might be negotiated at Torquay.

In rejecting this line of argument, the court below held that the term "concessions" was itself ambiguous and that, therefore, the import of the notice must be ascertained from an examination of it in its entirety. On the basis of that examination, it concluded that the notice gave sufficient indication of possible duty increases. If the court below erred in deeming "concessions" to be ambiguous, we submit that the error was in petitioner's favor. For to the extent that the term has a settled meaning in trade agreements, it is not limited to reduction or binding of duty as petitioner contends.

a. The phrase "mutually advantageous tariff concessions," which appears in the portion of the notice relied on by petitioner (see *infra*, p. 12), is used as a term of art in the General Agreement on Tariffs and Trade. As used in GATT, the word "concession" for all countries describes increases, bindings, and decreases of duty and other trade restrictions of all sorts. The term "mutually advantageous," moreover, is descriptive under GATT not of a particular negotiated adjustment respecting a single item, but of the total effect of the bargaining by any two or more countries. Thus, the GATT preamble speaks of "reciprocal and mutually advantageous arrangements" and Article XXVIII makes clear that "negotiations on a reciprocal and mutually advantageous basis * * * are of great importance to the expansion of international trade." Department of State Publication 6629, Commercial Policy Series 167, pp. 3, 55. While these negotiations are "directed to the substantial reduction of the general level of tariffs

and other charges on imports and exports * * *" (Article XXVIII, *id.* at p. 55), plainly this objective of reduction of the general level of tariffs may be attained by an agreement which lowers the rates on most items, but which may increase them moderately on a few. The schedules containing some such increases are still "Schedules of Concessions" (Article II, *id.* at p. 5), and the general agreement reached may still be "mutually advantageous" to the countries involved (Article II and XXVIII, *id.* at pp. 3, 55).[3]

b. From the very start of GATT the general reduction in tariff rates has been accompanied by increases in rates and restrictions on other items. Some increases were effected in the first negotiations under GATT at Geneva, Switzerland, in 1947, under a notice issued by the Interdepartmental Committee on Trade Agreements, which simply announced the intention to conduct "trade-agreement negotiations" (11 F.R. 13447).[4] In 1950, the Committee issued the notice referred to by petitioner—which stated that negotiations would be entered into "for the purpose of negotiating mutually advantageous tariff concessions" (see *infra*, p. 12). This resulted in the Torquay protocol, which reduced most tariff rates but raised some others, including that on leather gloves.

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[3] Petitioner notes (Pet. 7–15) that "concessions" is often used in trade agreements, statutes, and other official sources to mean, either in terms or in context, only reductions or bindings. But these instances do not show that when "concessions" is not so limited explicitly or implicitly, it nevertheless necessarily continues to have only this limited meaning.

[4] *Analysis of GATT* (Department of State Publication 2983, Commercial Policy Series 109), pp. 34, 104, 143.

In September 1955, the Trade Agreements Committee issued a notice announcing the intention to conduct trade agreement negotiations "for the purpose of negotiating mutually advantageous tariff concessions" (20 F.R. 7140), the precise language relied on by the petitioner as limiting the Torquay negotiations to decreases or bindings of duty only. It is significant that, while most of the arrangements negotiated at the major negotiating conference held pursuant to this notice in 1956 consisted of reductions in duties and in other trade restrictions, some increases were negotiated as well. Examples of such increases which were incorporated in the schedules of various countries include liquid sugar from Cuba and a variety of items in trade between the United States and the United Kingdom. See *Analysis of United States Negotiations, Sixth Protocol (Including Schedules) of Supplementary Concessions*, Department of State Publication 6348, Commercial Policy Series 158, pp. 48, 299–307.

Moreover, there are abundant examples, involving literally hundreds of commodities or items, of rate increases as a result of negotiations in the many GATT sessions held from time to time following standard notice provisions. These notices indicated that the purpose of the conferences was the renegotiating of concessions under Article XXVIII of GATT. The increases, with a full description of the countries involved in the negotiations and the commodities and rates subjected to negotiations, are found in the following Department of State Publi-

cations: 6001/152, 6201/154, 6291/156, 6324/157, 6667/169, and 6775/170. The last cited publication defines a "tariff concession" as (*id.* at p. 3):

> an agreement not to impose an import duty higher than that specified in the agreement, or not to impose any duty. ***The result of a concession may be a reduction in duty, a continuation of a duty, or an increase in duty.*** [Emphasis added.]

2. On the basis of the foregoing evidence, we think that the term "concession," standing alone, put interested parties on notice that there might be an increase in duty on one or more of the items (including gloves) that were listed as the subject of the Torquay negotiations. In any event, as the court below correctly held, the scope of the notice was not exclusively fixed by the expression "mutually advantageous tariff concessions," and the notice as a whole contained ample warning that increases in duty might be negotiated at Torquay.

The third paragraph of the notice reads in full:

> There is annexed hereto a list of articles imported into the United States to be considered for *possible modification of duties and other import restrictions, imposition of additional import restrictions,* or specific continuance of existing customs or excise treatment in proposed trade agreement negotiations with the above countries. [Emphasis added.]

This specific language was taken from Section 350 of the Tariff Act of 1930 as added by the Trade Agreements Act of 1934 (current Section 350(a)(1)(B), 19 U.S.C. 1351(a)(1)(B)), which, as petitioner itself

concedes (Pet. 16), authorizes the President to proclaim increases, decreases, or any change or binding of the full range of restrictions on trade.

Even if, however, the paragraph were read without reference to the statutory source of its language, it could not conceivably be taken as an assurance that no increase of duty would be considered for any article on the list. Rather, the use of the term "modification" rather than "reduction" and the statement that "additional import restrictions" might be imposed plainly showed the possibility that consideration would be given to according less favorable customs treatment to some articles—even though the overall result of the negotiations would be a lessening of trade restrictions.

Section 4 of the Trade Agreements Act does not require that the notice of intention to negotiate state expressly that, as to a particular article on the list, an increase in duty (or for that matter any other specific change in customs treatment) will be considered. All that the section requires is that "interested persons" be given "reasonable public notice of the intention to negotiate" so that they may have an opportunity to present their views to the officials concerned. In this case, petitioner and other importers of women's gloves were apprised by the notice that gloves were to be the subject of possible negotiation at Torquay and that the result might be a modification of the existing rate of duty or the imposition of additional import restrictions. If they were opposed to any change, they had ample opportunity to present their views.

CONCLUSION

For the foregoing reasons, it is respectfully submitted that the petition for a writ of certiorari should be denied.

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DECEMBER 1961.

APPENDIX

STATUTE AND EXECUTIVE ORDER INVOLVED

Section 4 of the Trade Agreements Act of 1934, 48 Stat. 943, as amended, 19 U.S.C. 1354, provides in part as follows:

> Before any foreign trade agreement is concluded with any foreign government or instrumentality thereof under the provisions of this Part, reasonable public notice of the intention to negotiate an agreement with such government or instrumentality shall be given in order that any interested person may have an opportunity to present his views to the President, or to such agency as the President may designate, under such rules and regulations as the President may prescribe * * *.

Paragraphs 4 and 5 of Executive Order No. 10082 (14 F.R. 6105), promulgated by the President under Section 4 of the Trade Agreements Act of 1934, as amended, provided in part as follows:

> 4. Before entering into the negotiation of a proposed trade agreement under the Trade Agreements Act, as amended, the Trade Agreements Committee shall submit to the President for his approval a list of all articles imported into the United States which it is proposed should be considered in such negotiations for possible modification of duties and other import restrictions, imposition of additional import restrictions, or specific continuance of existing customs or excise treatment. Upon approval by the President of any such list, as originally

submitted or in amended form, the Trade Agreements Committee shall cause notice of intention to negotiate such agreement, together with such list of articles, to be published in the FEDERAL REGISTER.

* * * * *

5. Any interested person desiring to present his views with respect to any article in any list referred to in paragraph 4 hereof, or with respect to any other aspect of a proposed trade agreement, may present such views to the Committee for Reciprocity Information, which shall accord reasonable opportunity for the presentation of such views.

The pertinent provisions of the notice of intention to negotiate (15 F.R. 2114, April 11, 1950) are:

INTERDEPARTMENTAL COMMITTEE ON TRADE AGREEMENTS

TRADE-AGREEMENT NEGOTIATIONS WITH CERTAIN COUNTRIES

* * * * *

Pursuant to section 4 of the Trade-Agreement Act, approved June 12, 1934, as amended (48 Stat. 945, ch. 474, Public Law 307, 81st Cong.) and to paragraph 4 of Executive Order 10082 of October 5, 1949 (14 F.R. 6105), notice is hereby given by the Interdepartmental Committee on Trade Agreements of intention to conduct trade-agreement negotiations with the following countries, * * *. It is proposed to enter into negotiations with these countries for the purpose of negotiating mutually advantageous tariff concessions. Negotiations with Austria, the Federal Republic of Germany, Guatemala, Korea, Peru, and Turkey will also be for the purpose of their accession to the General Agreement on Tariffs and Trade.

There is annexed hereto a list of articles imported into the United States to be considered for possible modification of duties and other import restrictions, imposition of additional import restrictions, or specific continuance of existing customs or excise treatment in proposed trade agreement negotiations with the above countries.

* * * * *

No article will be considered in the negotiations for possible modification of duties or other import restrictions, imposition of additional import restrictions, or specific continuance of existing customs or excise treatment unless it is included, specifically or by reference, in the annexed list or unless it is subsequently included in a supplementary public list. No duty or import tax imposed under a paragraph or section of the Tariff Act or Internal Revenue Code other than the paragraph or section listed with respect to such article will be considered for a possible decrease, although an additional or separate duty on an article included in the annexed list which is imposed under a paragraph or section other than that listed may be bound against increase as an assurance that the concession under the listed paragraph or section will not be nullified.

* * * * *

Pursuant to section 4 of the Trade Agreements Act, as amended, and paragraph 5 of Executive Order 10082 of October 5, 1949, information and views as to any aspect of the proposals announced in this notice may be submitted to the Committee for Reciprocity Information in accordance with the announcement of this date issued by this Committee.

The United States Tariff Commission has this date issued a notice stating the location and availability of tariff and commodity in-

formation pertinent to the pending negotiations announced herein.

By direction of the Interdepartmental Committee on Trade Agreements this 11th day of April 1950.

CARL D. CORSE,
Chairman, Interdepartmental Committee on Trade Agreements.

LIST OF ARTICLES IMPORTED INTO THE UNITED STATES WHICH IT IS PROPOSED SHOULD BE CONSIDERED IN TRADE AGREEMENT NEGOTIATIONS WITH THE COUNTRIES SPECIFIED IN FOREGOING PUBLIC NOTICE

The following list contains descriptions of articles imported into the United States which it is proposed should be considered for possible modification of duties and other import restrictions, imposition of additional import restrictions, or specific continuance of existing customs or excise treatment in the trade-agreement negotiations which are proposed with the countries specified in the foregoing public notice.

* * * * *

U.S. GOVERNMENT PRINTING OFFICE: 1951